

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230009508

APPLICANT REQUESTS: correction of his records to show he elected Reserve Component Survivor Benefit Plan (RCSBP) spouse coverage within 1 year of marriage.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Divorce Certificate, 3 March 2021
- Commonwealth of Puerto Rico Court of First Instance Divorce Sentence Notification, 27 February 1998 (Spanish Language)
- U.S. Passport, 8 October 2014
- Current Spouse's Columbian Passport, 19 September 2018
- Republic of Columbia Civil Marriage Registration, 18 October 2019
- Headquarters, U.S. Army Garrison, Fort Buchanan, Marriage Certification for Defense Enrollment Eligibility Reporting System (DEERS)/Defense Finance and Accounting Service (DFAS), 3 March 2021
- Current Spouse's U.S. Permanent Resident Identification Card, 14 December 2021
- Current Spouse's Social Security Card, 29 December 2021
- DFAS Letter, 24 June 2023
- DD Form 2656-5 (RCSBP Election Certificate), 11 November 2023

FACTS:

1. The applicant states he requests SBP spouse coverage for his current wife, V\_\_\_\_ M\_\_\_\_. They were married in Columbia on 18 October 2019 and stayed there until her permanent resident card was processed by the U.S. Embassy. He tried to enroll her in the SBP in March 2020 within a year of their marriage; however, his request was denied at Fort Buchannan, Puerto Rico, because she did not have a social security account number and was not present in the U.S. Embassy. The U.S. Embassy issued her resident card on 14 December 2021, which was beyond the 1-year deadline following their marriage. His wife received a social security account number on 29 December 2021 and they have been trying unsuccessfully to enroll her in SBP since that time.

2. Following enlisted service in the New York Army National Guard (NYARNG), he was appointed as a Reserve commissioned officer of the Army and executed an oath of office in the NYARNG on 6 October 1977.
3. He and A\_\_\_\_ R\_\_\_\_ V\_\_\_\_ married on 15 December 1984.
4. He was promoted to major in March 1992 and transferred to the U.S. Army Reserve on 14 February 1993.
5. He and A\_\_\_\_ R\_\_\_\_ V\_\_\_\_ divorced on 27 February 1998. The Puerto Rican divorce decree does not address the SBP.
6. His service records do not contain a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter). His service records also do not contain a contemporaneous DD Form 2656-5 within 90 days of receipt of his 20-year letter.
7. U.S. Army Reserve Personnel Command Orders C-05-112871, dated 9 May 2001, released him from assignment to the U.S. Army Reserve Control Group (Reinforcement) and transferred him to the Retired Reserve in the grade of major by reason of completion of 20 or more years of qualifying Reserve Component service, effective 11 May 2001.
8. U.S. Army Human Resources Command (HRC) Form 249-2-E (Chronological Statement of Retirement Points), prepared on 7 December 2006, shows he completed 20 qualifying years of Reserve Component service for retired pay, effective 13 February 1996. He completed 25 years, 2 months, and 28 days of qualifying Reserve Component service for retired pay, effective 11 May 2001.
9. His DD Form 108 (Application for Retired Pay Benefits), 8 June 2008, shows he requested retired pay beginning 10 January 2009.
10. His DD Form 2656 (Data for Payment of Retired Personnel), 10 June 2008, shows in:
  - a. Section VIII (Dependency Information):
    - block 22 (Spouse) – he listed A\_\_\_\_ V\_\_\_\_ (his former spouse) with a marriage date of 15 December 1984
    - block 25 (Dependent Children) – he listed two children with birthdates in 1989 and 1990

## b. Section IX (SBP Election):

- block 26 (Beneficiary Categories) – he placed an "X" in the "I Elect Coverage for Spouse and Child(ren)" box
- block 34 (Level of Coverage) – he placed an "X" in the "I Elect Coverage Based on Full Gross Pay" box
- block 30 (Member) – he signed the form on 10 June 2008
- block 40 (Witness) – an Army SBP Counselor signed the form as his witness on 10 June 2008

11. HRC Orders P09-814105, dated 12 September 2008, retired him and placed him on the Army of the United States Retired List in the grade of major, effective 10 January 2009.

12. An HRC letter, dated 12 September 2008, approved his application for retired pay and enclosed his Certificate of Retirement and Orders P09-814105.

13. He reached age 60 in January 2009.

14. He provided copies of his U.S. Passport issued on 8 October 2014 and his future spouse's Columbian Passport issued on 19 September 2018.

15. He and V\_\_\_\_ A\_\_\_\_ M\_\_\_\_ married on 18 October 2019 in Columbia.

16. He also provided the following documents for consideration:

- notarized divorce certification
- Columbian civil marriage registration
- his current wife's U.S. Permanent Resident card, issued 14 December 2021
- his current wife's social security card, issued 29 December 2021

17. A DFAS letter, dated 24 June 2023, informed him that DFAS could not take action on his request to add his current spouse as his SBP beneficiary because he did not apply within 1 year of marriage. He was advised to apply to the Army Board for Correction of Military Records for a records correction.

18. His DD Form 2656-5, dated 14 November 2023, shows in:

- block 7 (Are You Married) – he placed an "X" in the "Yes" box
- block 8 (Do You Have Any Dependent Children) – he placed an "X" in the "No" box
- block 9a (Spouse's Name) – he listed V\_\_\_\_ A\_\_\_\_ M\_\_\_\_ with a marriage date of 18 October 2019

- block 12 (Options) – he placed an "X" in the "Option C (Immediate Annuity)" box
- block 13 (Type of Coverage) – he placed an "X" in the "Spouse Only" box
- block 14 (Level of Coverage) – he placed an "X" in the "Full Retired Pay" box
- block 17 (Signature of Member) – he signed the form on 14 November 2023
- block 19 (Witness) – the Fort Buchanan Retirement Services Officer signed the form as his witness on 10 June 2008

19. Email correspondence from a DFAS Supervisory Military Pay Specialist, dated 22 April 2024, states the applicant's current SBP coverage is child only.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on public law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant divorced his former spouse in February 1998; however, elected to keep his former spouse as the beneficiary on his June 2008 election. This election was accepted by the U.S. Army Human Resources Command (HRC) in September 2008. At the time of his retirement in January 2009, he was divorced from his former spouse and married to his current spouse in October 2019. The Board found by a preponderance of the evidence that the applicant was unable to procure a social security number for his current spouse within the 1-year statutory window following his marriage.

2. Currently, HRC shows the applicant's status as "Child Only," despite his submitted DD Form 2656-5 not including minor children. The Board found that the applicant's original election of "Spouse and Children" coverage in 2008 and elections being categorical in nature, maintaining the "spousal" election is both equitable and logical and therefore determined relief was warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing the applicant deemed an election of Option C "Spouse Only" coverage within one year of the marriage as required by the relevant statutory provision and the request was received and processed by the appropriate office in a timely manner.

█

█ █

---

█

█

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 135-180 (Qualifying Service for Retired Pay Nonregular Service), effective 1 August 1987 through 27 May 2015, implemented statutory authorities governing granting retired pay to Soldiers and former Reserve Component Soldiers.

a. Paragraph 2-2 stated it is the responsibility of each qualified individual to submit his or her application for retired pay. The DD Form 108 (Application for Retired Pay Benefits) is the only form on which application for this pay will be made. Approximately 6 months prior to reaching age 60, eligible Soldiers assigned to the Retired Reserve will receive a DD Form 108 and DA Form 4240 (Data for Payment of Retired Army Personnel) from the U.S. Army Reserve Personnel Center. The DD Form 108 should not be submitted earlier than 120 days nor later than 90 days prior to the date retired pay is to begin.

b. Paragraph 2-3 stated each Reserve Component Soldier who completes the qualifying service required to be eligible for retired pay at age 60 will be notified in writing within 1 year after he or she has completed that service. This notification will be issued by the U.S. Army Reserve Personnel Center or National Guard Bureau, as applicable, at the time 20 satisfactory years of service is completed. The notification will be issued to those individuals credited with 20 years of qualifying service prior to discharge or transfer to the Retired Reserve.

c. Paragraph 3-2 stated the RCSBP allows Reserve Component Soldiers and former Soldiers who have received notification of their eligibility for retired pay at age 60 to provide a survivor annuity for their dependents should the Soldier or former Soldier die before reaching age 60 and receipt of retired pay. Coverage is not automatic. Those eligible must elect one of the three options offered on the SBP Election Certificate (DD Form 1883). All eligible personnel have 90 days from the date of receipt of the DD Form 1883 to make their election and return the form to the appropriate office. Should the Soldier elect Option A or fail to return the DD Form 1883 within the prescribed time period, and die before reaching age 60, the survivors will not receive benefits under Public Law 95-397. Failure of a Soldier to initially elect coverage at this time does not preclude eligibility to subsequently elect survivor benefit coverage under the SBP with his/her application for retired pay upon reaching age 60.

2. Public Law 95-397, the RCSBP, enacted 30 September 1978, provided a way for those who qualified for Reserve (Non-Regular) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options were available: (A) elect to decline enrollment and choose at age 60 whether to start SBP participation, (B) elect that a beneficiary receive an annuity if they die before age 60 but delay payment of it until the date of the member's 60th birthday, and (C) elect that a beneficiary receive an annuity immediately upon their death if before

age 60. Once a member elected either Option B or C in any category of coverage, that election was irrevocable. Option B and C participants do not make a new SBP election at age 60. They cannot cancel SBP participation or change options they had in the RCSBP; RCSBP coverage automatically converts to SBP coverage upon retirement.

3. Public Law 106-398, enacted 30 October 2000, required written spousal consent for a Reserve Component service member to delay making an RCSBP election until age 60. The law is applicable to cases where 20-year letters were issued after 1 January 2001. In essence, failure to elect an option upon receipt of the 20-year letter results in the default election of Option C (Immediate Coverage).

4. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the SBP, but who later marries or acquires a dependent child, may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child.

//NOTHING FOLLOWS//